

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO.: 05-11333 MEL

LUCIA VILLANUEVA      )  
Plaintiff      )  
                    )  
VS.              )  
                    )  
TOR REY USA INC.      )  
Defendant      )

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HER  
MOTION TO AMEND COMPLAINT AND REMAND ACTION TO  
SUFFOLK SUPERIOR COURT**

Now comes Lucia Villanueva, Plaintiff in the above-entitled action, and in support of her Motion to Amend Complaint and Remand Action to Suffolk Superior Court, states as follows:

I.      FACTS

The subject action arises out of an incident which occurred on February 18, 2005 at the Tapatio Mexican Grill in Somerville, Massachusetts. At said time and place, Plaintiff, Lucia Villanueva was working on a meat grinder when her right dominant hand was pulled into its defective and unguarded point of operation causing traumatic amputation of her index finger and thumb and her right hand to be crushed. (Exhibit 1)

On July 21, 2005, Defendant Tor Rey USA, Inc. served Defendant's Initial Disclosure on the Plaintiff. Within its disclosure, Defendant Tor Rey USA, Inc. identified proposed defendant, General Services, Inc. of

Medford, Massachusetts as the distributor, seller, or other supplier of the subject meat grinder. (Exhibit 2) Plaintiff has immediately moved to amend her complaint to add General Services, Inc. as a Defendant upon becoming aware of its identity.

## II. ARGUMENT

### A. JUSTICE REQUIRES PLAINTIFF BE GIVEN LEAVE TO AMEND COMPLAINT TO ADD A NECESSARY PARTY

This product liability action was removed to Federal Court by diverse Defendant Tor Rey USA, Inc. Following removal to Federal, Defendant Tor Rey USA, Inc. disclosed the existence of an additional defendant, General Services, Inc., a Massachusetts corporation as the distributor, seller, or other supplier of the subject product. (Exhibit 2) Plaintiff immediately moved to amend her complaint to add General Services, Inc. as a Defendant upon becoming aware of its identity.

Leave of court to amend is given freely where justice requires.

Aversa v. United States, 99 F.3d 1200, 1214 n.13 (1st Cir.1996);  
Resolution Trust Corp. v. Gold, 30 F.3d 251, 253 (1st Cir.1994); Foman  
v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962).

Justice requires that Plaintiff be given leave to amend her complaint to add General Services, Inc. as a defendant in this action as it was directly involved in the testing, inspection, distribution and sale of the product which is alleged to have caused the Plaintiff's injuries. Plaintiff has

alleged that the subject incident and the resulting injuries to the Plaintiff were the result of General Services, Inc.'s negligence and breaches of warranty in the distribution or sale of said product without reasonably necessary safeguards such as a machine guard at the point of operation to prevent injury to user's hands and/or fingers.

B. JOINDER OF NON DIVERSE DEFENDANT AND REMAND TO STATE COURT IS PROPER WHERE STATE LAW ISSUES PREDOMINATE, THERE IS NO PREJUDICE TO DEFENDANT AND JOINDER PROMOTES EFFICIENT USE OF JUDICIAL RESOURCES

This product liability action was removed to Federal Court by diverse Defendant Tor Rey USA, Inc. immediately upon service of the Complaint. Following removal to Federal, Plaintiff has learned of the existence of an additional defendant, General Services, Inc., a Massachusetts corporation. Plaintiff alleges that proposed defendant General Services, Inc. was directly involved in the distribution and sale of the product alleged to have caused Plaintiff's injuries. Plaintiff is seeking leave of court to amend her Complaint to add General Services, Inc. as a defendant and remand of this action to state court due to lack of diversity jurisdiction.

A nondiverse party is not required to be "indispensable" before that party can be joined in a diversity action. St. Louis Trade Diverters, Inc. v. Constitution State Ins. Co., E.D.Mo.1990, 738 F.Supp. 1269. District courts will permit a joinder which destroys diversity when consistent

with principles of fundamental fairness using the following factors: (1) any delay, as well as the reason for delay, in seeking joinder, (2) resulting prejudice to defendant, (3) likelihood of multiple litigation, and (4) plaintiff's motivation for the amendment. Nazario v. Deere & Co., S.D.N.Y.2003, 295 F.Supp.2d 360.

Plaintiff states that her proposed amended complaint is submitted in order to join a necessary party Defendant to this product liability action. There was no untoward delay in seeking to add proposed defendant General Services, Inc. as Plaintiff has moved to amend her complaint immediately upon discovery of the identity of proposed Defendant General Services, Inc. No written or deposition discovery has been conducted.

There is no prejudice to a diverse defendant by adding a nondiverse defendant which destroys diversity jurisdiction when the action was moved shortly after filed in state court and no proceedings had occurred there; the mere fact that defendant faces prospect of trial in state court is insufficient in itself to demonstrate legal prejudice. Hughes v. Promark Lift, Inc., S.D.Fla.1990, 751 F.Supp. 985.

Allowance of Plaintiff's Motion to Amend Complaint to add a necessary party promotes judicial economy and prevents duplicative litigation. Plaintiff has a cause of action against both Tor Rey Usa, Inc., the manufacturer and distributor of the subject product and proposed defendant General Services, Inc., the supplier of the subject product

under Massachusetts negligence and warranty law. The legal elements and facts relevant to each cause of action overlap considerably and if Plaintiff is forced to litigate in separate forums, duplicative testimony is probable.

Having both defendants as parties to one action promotes efficient use of judicial resources, and there is a lack of significant federal interest in deciding state law issues which predominate, and remand will not significantly alter the present parties. See Heininger v. Wecare Distributors, Inc., S.D.Fla.1989, 706 F.Supp. 860. Carter v. Dover Corp., Rotary Lift Div., E.D.Pa.1991, 753 F.Supp. 577. Morze v. Southland Corp., E.D.Pa.1993, 816 F.Supp. 369. A balance of equities requires that plaintiff be allowed to join General Services, Inc. in this action and that this action be remanded to state court due to nondiversity of General Services, Inc.

Wherefore, Plaintiff respectfully requests this Honorable Court grant her leave to file the subject Amended Complaint and remand this action to Suffolk Superior Court for lack of diversity jurisdiction.

Respectfully submitted,  
Plaintiff, By her attorney,



Michael R. Rezendes  
REZENDES & TREZISE  
Batterymarch Park II  
Quincy, MA 02169  
617 472-3900

Dated: 7/10/05

TALDO AMBULANCE SERVICE, INC.  
137 Washington St., P.O. Box 435  
Somerville, MA 02143  
1- (617) 625-0042  
Fax: 1- (617) 625-0941



ATLANTIC AMBULANCE  
Div. of Cataldo Ambulance  
59 N. Franklin St.  
Lynn, MA 01904  
1- (781) 592-5400  
Fax: 1- (781) 477-0320

## PATIENT

AGE: <input type="checkbox"/> 24	DATE OF BIRTH: 12/20/1980	SOCIAL SECURITY NUMBER: N/A
MM DD YYYY		

ST: Lucia M.I. Valenzuela LAST

ILITY (NH): Room No.:

EE ADDRESS: 77 Grove St. APT. NO.:

STATE: MA ZIP: 02150  
IE PHONE: 171838-9277 WORK PHONE: ( )

PONISBLE PARTY: Self RELATIONSHIP:

TELEPHONE:  WORK PHONE: ( )

ARY CARE PHYSICIAN: CITY:  HOSPITAL:

## TRIP INFORMATION

TRIP ID: <u>49</u>	TECHNICIAN 1: <u>Silva</u>
SISTING UNITS: <u>PD, FD, A50</u>	TECHNICIAN 2: <u>Cohen</u>
TECHNICIAN 3: <u></u>	

SE OR DR. ON BOARD?  YES  NO

## TRANSPORT FROM / INCIDENT LOCATION

ITY NAME: 2 Broadway APT/ROOM #: PER

ET ADDRESS: 2 Broadway STATE: MA ZIP: 02145 FLOOR:

TRANSPORT TO Boston APT/ROOM #: PER

METER READING: 2.7 STATE: MA ZIP:

START:  ENDING:  TOT. MILEAGE: 2.7

## INCIDENT TYPE

ASSAULT  BICYCLE  BITE/STING  FALL  FIRE  
HAZMAT  MEDICAL  MVA-PLATE # ST  
PEDESTRIAN  SHOOTING  STABBING  
OTHER Finger amputation

THIS INCIDENT WORK-RELATED?  YES  NO

## PATIENT DISPOSITION

DISCHARGE <input type="checkbox"/> NO SERVICE	<input type="checkbox"/> REFUSAL
ROUND TRIP <input type="checkbox"/> SECT-12 (ATTACH COPY)	<input type="checkbox"/> SUDDEN DEATH
TREATED-NO TRANSPORT	
OUTPATIENT VISIT:	

DEPARTMENT  SERVICE PROVIDED

TRANSFER:

REASON:  ADMITTED TO ROOM #:

ASSESSMENT PERFORMED?  YES  NO  
T TRIAGED TO BLS)

ASSESSMENT(S):

SCENARIO: 24 yr old female w/ finger amputation from cheese grater

Industrial cheese grater - when her hand got caught in the blades. Pt. comuted R thumb & index finger @ first knuckle. Pt. elo R hand pain but alive

PLEASE PRINT / USE BLACK OR BLUE INK ONLY								
DATE OF SERVICE	CALL RECEIVED	LOG #	CALL RECEIVED BY:					
2/18/05		327-670	Nicole					
S M T W T (F) S	AM PM	LOG #:						

SOURCE OF CALL	HOME	WORK	HOSPITAL	ON H.	FAMILY
INDOOR	OUTDOOR	AMBULANCE	REFERRAL	EMPLOYER	HMO
OTHER: <u></u>					

DISPATCH FOR		
ALS	PALS	EMERGENCY
<input type="checkbox"/> P-B WAIVER	<input type="checkbox"/> OTHER	M.R. #

## RESPONSE TIMES

DISPATCH	PR	SCENE ARRIVAL	PATIENT CONTACT	SCENE DEPART	PR	HOSPITAL ARRIVAL	IN SERVICE
711	1	715		726	2	733	

## 1ST RESPONDERS

POLICE  FIRE  OTHER A38

## CHIEF COMPLAINT / CLINICAL IMPRESSION

Finger amputation, CLINICAL FIELD IMPRESSION VITAL SIGNS

## UNABLE TO OBTAIN / REASON:

TIME	BP	PULSE	RESP.	O2 SAT
on route	116/64	76	16	100% RA

## PHYSICAL ASSESSMENT

AVPU:  ALERT  VERBAL  PAINFUL  UNRESPONSIVE

LUNGS: LEFT  CLEAR  DIM  ABSENT  WHEEZE  RALES  RHONCHI  
RIGHT  CLEAR  DIM  ABSENT  WHEEZE  RALES  RHONCHI

PUPILS:  PERRL  DILATED  CONSTR.  SLUGGISH  UNEQUAL  UNREACT

SKIN:  NORMAL  HOT  WARM  COOL  COLD  DRY  MOIST  
 DIAPHORETIC  PALE  CYAN  MOTTLED  FLUSHED

GLASGOW COMA SCALE: 15

## PROCEDURES

AIRWAY: A0396  OPA  NPA  LMA SIZE: \_\_\_\_\_  
 ETT  NTT SIZE: \_\_\_\_\_ ATT/SUCC: \_\_\_\_\_

OXYGEN: A0422  N/C  NRB  BVM LPM: \_\_\_\_\_

DEFIBRILLATION: A0392  AED # SHOCKS: \_\_\_\_\_  MANUAL # SHOCKS: \_\_\_\_\_

12 LEAD ECG: A9214  NO  YES INTERPRETATION: \_\_\_\_\_

IV THERAPY: SITE: 6Ae GAUGE: 16g ATT/SUCC: 1/1  
A0394 FLUID: NS TOT. AMOUNT FLUID ADMIN: KVO

IMMOBILIZATION:  C-COLLAR  SHORT BOARD / KED  LONG BOARD

OTHER:

## PATIENT MEDICATIONS

Pl. denies

## PAST MEDICAL HISTORY

Pl. denies

## ALLERGIES

NKA  DENIES

## NARRATIVE

Upon arrival, found 24 yr old female walking through restaurant. Pt. was using a

Industrial cheese grater - when her hand got caught in the blades. Pt. comuted R thumb & index finger @ first knuckle. Pt. elo R hand pain but alive





USA, INC

3920 WESTHOLLOW PARKWAY  
HOUSTON, TX 77062  
281-584-3150

## Invoice

**INVOICE NUMBER:**

INVOICE DATE:

PAGE:

SCHOLARS

MANUFACTURED BY  
P. T. BROS.  
21, FLEET, M.C. 3315, C.  
U.S.A.

1118

GENERAL SERVICES INC  
407R MYSTIC AVE. UNIT 16  
MEDFORD MA 02155  
USA

CUSTOMER ID	CUSTOMER FNAME	PAYMENT TERMS		
MA-GSI	7498	2% 10, Net 30 Days		
SHIP TO FNAME	SHIPPING METHOD	SHIP DATE	DEAL DATE	
JESUS	WATKINS COLLECT	1/8/02	2/8/02	
QUANTITY	DESCRIPTION	BACKORDER	ENTER PRICE	EXTENSION
1 UN. M-22 R	M-22 R OPEN BOWL MEAT GRINDER 1 HP MOTOR, 110V 60 HZ SER# I01-11958 I01-11957		774.00	1,548.00

CHECK NO.:

SUBTOTAL	
STATE TAX	
ROUNDUP	1,543.00
CHARGE	
REFUND	
<b>TOTAL</b>	<b>1,548.00</b>

THE CHARGE PER MONTH ON ALL PAST DUE BALANCES.

TRR 017